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December 18, 2007

**VIA OVERNIGHT MAIL**

Magistrate Judge Andrew Peck  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, NY 10007

Re: National Union Fire Insurance Company v. McEwan, et al.  
Index No.: 07 CIV 7515

Dear Magistrate Judge Peck:

We represent the plaintiff in the above-referenced matter. Pursuant to your directive issued during the court conference held on November 30, 2007, please allow the within to serve as the "letter brief" requested regarding diversity jurisdiction.

The plaintiff in this action is National Union Fire Insurance Company of Pittsburgh, PA ("National Union"). National Union brings this action as subrogee and assignee of The Rockefeller Foundation ("Rockefeller"). It is the citizenship of National Union, as subrogee, which is controlling when evaluating whether diversity jurisdiction exists (*Matter of the Complaint of Kreta Shipping, S.A., as Owner of M/V Amphion, for Exoneration from Limitation on Liability* (S.D.N.Y. 1997)). National Union and Rockefeller are both incorporated and maintain a primary place of business in the State of New York. However, defendant Lisa Baker is believed to be a resident of Florida. As such, it is Ms. Baker's residency that serves as the basis for the plaintiff's assertion that venue in the instant Court is proper pursuant to 28 U.S.C. § 1332.

However, diversity is not the only basis upon which this Court is afforded jurisdiction. The plaintiff has asserted a RICO cause of action pursuant to 18 U.S.C.A. § 1962 against all defendants. As such, jurisdiction in the instant court is proper pursuant to 28 U.S.C. § 1331, regardless of whether diversity jurisdiction exists or not.

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We trust the foregoing is satisfactory to the court. We will be happy to provide any further information that the Court may deem necessary. We also take this opportunity to provide you with a courtesy copy of the Amended Complaint.

Thank you for your consideration.

Very truly yours,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

A handwritten signature in black ink, appearing to read 'B. Keatts', with a long horizontal line extending to the right.

Brian W. Keatts

Encl.

cc: Anthony McEwan (via overnight mail with encl.)  
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*Defendant*

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